

### **REMARKS**

Claims 6-17 are now pending in the application. Claims 6 and 17 have been amended to clarify Applicants' invention. The amendments to the claims contained herein are of equivalent scope as originally filed and, thus, are not narrowing amendments. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **REJECTION UNDER 35 U.S.C. § 102**

Claims 6-8 and 14-17 stand rejected under 35 U.S.C. §102(b) as being anticipated by Bois (U.S. 3,499,269). The rejection is respectfully traversed.

Bois does not teach a muffler, but rather a particulate filter for example for use in a diesel powered vehicle. Also, unlike the valve of Applicants' invention, the Bois valve is either in a closed condition where the pipe it faces is totally sealed off or in opened condition. Hence, Bois does not teach, claim or even suggest anything other than a spring-biased adjustable safety valve normally closing a central aperture (see Bois claim 1). By contrast, Applicants' valve always has an annular opening at the end of the exhaust pipe which the valve faces. This enables a continuous adjustment to the exhaust gas flow and therefore a continuously adjustable noise abatement device. Claims 6-8 and 14-17 are therefore believed to be patentably distinguishable over Bois.

Claims 6, 7, 9, and 14-17 stand rejected under 35 U.S.C. §102(b) as being anticipated by Gillingham et al (U.S. 5,246,205). The rejection is respectfully traversed.

Similar to Bois, Gillingham et al is also involved with a valve for use in a particulate filter. Also like Bois, Gillingham et al seals an opening in the rest position of

the valve as particularly noted in its accent on a flexible seal member for providing a tighter seal or completely shut condition. A second distinction from Applicants' invention in Gillingham et al, is that the valve is not actuated by the flow of the exhaust gas stream itself. Rather, this active valve is actuated by a variety of systems including solenoid, vacuum and/or pressure actuators. See the Gillingham et al specification at column 4, lines 18-22. Hence, similar to Bois, Gillingham et al is not concerned with providing a variable annular aperture at the mouth of an exhaust tube using a valve. Claims 6, 7, 9 and 14-17 are therefore believed to be patentably distinguishable over Gillingham et al.

#### **REJECTION UNDER 35 U.S.C. § 103**

Claims 8, 12 and 13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gillingham et al (U.S. 5,246,205) in view of Bois (U.S. 3,499,269). The rejection is respectfully traversed.

Without acceding to the correctness of the Examiner's remarks thereover, claims 8, 12 and 13 directly or indirectly depend from independent claim 6 and are therefore believed to be in condition for allowance for the reasons set forth above with respect to claim 6.

Claims 10 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gillingham et al (U.S. 5,246,205) in view of Bois (U.S. 3,499,269) and further in view of Uegane (U.S. 6,554,099). The rejection is respectfully traversed,

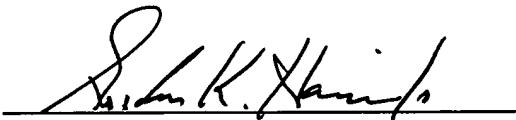
Without acceding to the correctness of the Examiner's remarks thereover, claims 10 and 11 indirectly depend from independent claim 6 and are therefore believed to be in condition for allowance for the reasons set forth above with respect to claim 6.

#### CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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